

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ELIZABETH TUCKER

VS.

**SAM'S WEST, INC., d/b/a SAM'S
CLUB NO. 8269, Subsidiary of
WALMART INC.**

§
§
§
§
§
§
§

CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Sam's West, Inc. d/b/a Sam's Club No. 8269, Subsidiary of Walmart Inc. (incorrectly sued, correctly named "Sam's East, Inc.," Sam's East, Inc. is the only necessary party) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 342nd Judicial District Court of Tarrant County, Texas, where this matter was pending under Cause No. 342-326713-21 in a matter styled *Elizabeth Tucker vs. Sam's West, Inc. d/b/a Sam's Club No. 8269, Subsidiary of Walmart Inc.* (the "State Court Action").

II. NATURE OF THE SUIT

2. This is a premises liability lawsuit alleging claims of personal injury resulting from Defendant's actions or inactions. *Plaintiff's Original Petition pp. 2-4.*

3. Plaintiff Elizabeth Tucker alleges that she suffered injuries when the heel of her shoe was caught in a crack in the sidewalk, causing her to fall and break her ankle on Defendant's premises. *Id. at p. 2.*

4. Plaintiff brought this lawsuit against Sam's West, Inc. in the 342nd Judicial District Court of Tarrant County, Texas. *See Plaintiff's Original Petition p. 1.*

III. TIMELINESS OF REMOVAL

5. Plaintiff commenced this lawsuit by filing her Original Petition on July 22, 2021. Defendant Sam's West, Inc. accepted service on July 26, 2021 through its agent, CT Corporation. Thus, removal is timely.

IV. BASIS FOR REMOVAL JURISDICTION

6. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Plaintiff is now and was at the time of the filing of this action a legal Texas resident residing and domiciled in Dallas, Dallas County, Texas. *Plaintiff's Original Petition p. 1.* Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

8. Plaintiff sued and served Sam's West, Inc. While Sam's West, Inc. is not a properly named party; Sam's West, Inc. is an Arkansas corporation. The principal place of business for Sam's West, Inc. is Bentonville, Arkansas.

9. Defendant's correct name is Sam's East, Inc. It is now and was at the time of the filing of this action an Arkansas corporation. It is an indirectly wholly-owned subsidiary of Walmart Inc. Sam's West, Inc., also an Arkansas corporation, is the sole shareholder of Sam's East, Inc. The principal place of business of Sam's East, Inc. and Sam's West, Inc. is Bentonville, Arkansas 72716. Accordingly, for diversity purposes, Sam's is a citizen of Arkansas.

10. There is and has been at all times relevant to this Notice of Removal, complete diversity of citizenship between Plaintiff and Defendant.

11. Upon information and belief, the amount in controversy exceeds the jurisdictional requirement of \$75,000, exclusive of interest and costs. Plaintiff alleges she suffered multiple surgeries resulting from the fall where she broke her ankle. *See Plaintiff's Original Petition p. 4.* Plaintiff seeks damages for medical care and expenses past and future, physical pain and suffering past and future, mental anguish past and future, physical impairment past and future, loss of earnings in the past, loss of household services in the past, and disfigurement in the past. *Id. at p. 5.* Plaintiff's Original Petition alleges damages in excess of \$250,000. *Id. at p. 2.* The sum claimed by Plaintiff should control the evaluation of amount in controversy.

12. In an effort to confirm the amount in controversy, Wal-Mart sent correspondence to Plaintiff's counsel on August 9, 2021 requesting Plaintiff stipulate she is seeking damages less than \$75,000 in damages, exclusive of interest and costs. Plaintiff's counsel has not responded to several communication efforts; thus, there is a presumption that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs. *Heitman v. State Farm Mut. Auto. Ins. Co.*, No. 5:02-CV-0433-D, 2002 U.S. Dist. LEXIS 6192 (N.D. Tex. April. 9, 2002).

V. THIS NOTICE IS PROCEDURALLY CORRECT

13. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendant is not a citizen of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

14. Sam's has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.

D: Signed Certificate of Interested Persons.

15. Sam's is filing with the Notice of Removal a completed Civil Cover Sheet, a Supplemental Civil Cover Sheet, and separate Certificate of Interested Persons.

16. Sam's retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

17. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 342nd Judicial District Court of Tarrant County, Texas.

18. Plaintiff has demanded a jury trial in the State Court Action. Defendant has demanded a jury trial in the State Action.

19. Trial has not commenced in the 342nd Judicial District Court of Tarrant County, Texas.

V. CONCLUSION

20. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the 342nd Judicial District Court of Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division.

WHEREFORE, PREMISES CONSIDERED, Defendant Sam's West, Inc. d/b/a Sam's Club No. 8269, Subsidiary of Walmart Inc., pursuant to and in conformance with the statutory requirements, removes this action from the 342nd Judicial District Court of Tarrant County, Texas, to this Court.

Respectfully submitted,

By: /s/ Bevan Rhine
BEVAN RHINE
Texas Bar No. 24036265
brhine@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Ave., Suite 3100
Dallas, TX 75201
214.220.5208 (direct)
214.220.5258 (direct fax)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to the following counsel of record either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 24th day of August, 2021:

Henry Campbell
JHCM Law Office
1910 Pacific Avenue, Suite 15100
Dallas, TX 75201
214.742.0708 / fax 214.742.5956
cambell@flash.net

/s/ Bevan Rhine
BEVAN RHINE